

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

Civil Action No. 05CV10165-RGS

GREAT NORTHERN INSURANCE COMPANY,
As Subrogee of Jon and Abby Winkelreid
Plaintiff(s)

VS.

FERGUSON & SHAMAMIAN ARCHITECTS, LLP
and W.B. MARDEN COMPANY
Defendant(s) and Third Party Plaintiff(s)

VS.

THIRTY ACRE WOOD, LLC and
ELLIS AND SCHNEIDER

Third Party Defendant(s)

**MEMORANDUM IN SUPPORT OF MOTION OF THIRTY ACRE WOOD, LLC. TO COMPEL
ANSWERS TO INTERROGATORIES AND RESPONSE TO REQUEST FOR PRODUCTION
OF DOCUMENTS FROM THE PLAINTIFF**

Pursuant to LR 37.1(B), the third-party Defendant, Thirty Acre Wood, LLC (“Defendant”) submits this Memorandum in support of its Motion to Compel Answers to Interrogatories and Response to Request for Production of Documents from the Plaintiff.

Reasons Discovery Conference Not Held LR 37.1(B)(1)

As further detailed in the attached Affidavit of Margaret Suuberg, counsel for the Defendant has called Plaintiff’s counsel on numerous occasions and has also sent a letter to Plaintiff’s counsel requesting a discovery conference, all in compliance with LR 37.1(A). Plaintiff’s counsel has not responded within seven (7) days to defense counsel’s requests for a discovery conference, as mandated by LR 37.1(A). In fact, Plaintiff has not responded at all to Thirty Acre Wood, LLC’s attempts to confer regarding this matter. Therefore, this Court is empowered to, and should, automatically grant this motion. See LR 37.1(A).

Defendant served Interrogatories and a Request for Production of Documents on the Plaintiff on or about January 13, 2006. Plaintiff did not forward Answers to said Interrogatories or any Response to said Request for Production of Documents.

Counsel for Thirty Acre Wood, LLC telephoned Plaintiff's counsel, James Cullen, on April 4, 2006 and left Mr. Cullen a voice mail message inquiring as to the status of Plaintiff's Answers and Response. Mr. Cullen did not return that call. Defendant's counsel left additional voice mail messages for Mr. Cullen on April 7, 2006 and again on April 10, 2006, seeking responses to the discovery requests. On April 10, 2006, Defendant's attorney spoke to Mr. Cullen, who indicated that he would promptly send out the Answers and Response.

Plaintiff's counsel did not serve either Answers or a Response. Defendant's counsel wrote to Mr. Cullen on April 27, 2006 requesting that he call to confer regarding the outstanding discovery requests. Mr. Cullen did not respond to that letter.

Counsel for the Defendant left Mr. Cullen another voice mail message on May 8, 2006, reiterating that she wished to discuss the discovery issues. Defendant's counsel did not receive a response to that telephone call.

As of this date, Plaintiff has not served Answers to Thirty Acre Wood, LLC's Interrogatories or a Response to Thirty Acre Wood, LLC's Request for Production of Documents from the Plaintiff.

All of the foregoing facts are sworn to in the attached Affidavit of Margaret Suuberg.

Nature of Case and Relevant Facts (LR 37.1(B)(3))

This case involves a multi-million dollar property loss suffered by homeowners, who received insurance proceeds from Plaintiff and subrogated their claim to Plaintiff. Plaintiff claims, inter alia, that the Defendant, Ferguson & Shamamian, Architects, negligently designed the premises and that the Defendant, W.B. Marden & Company, negligently designed or installed plumbing that caused the loss.

Ferguson & Shamamian brought a third-party action against Thirty Acre Wood as the general contractor, seeking contribution or indemnification. Facts to be discovered include the bases for and validity of Plaintiff's claims, cause of the loss, facts concerning Plaintiff's investigation, and the amount, bases for and validity of Plaintiff's claimed damages.

Discovery Sought (LR 37.1(B)(4))

Thirty Acre Wood seeks Answers to each and every one of its Interrogatories, and Responses to each and every one of its Requests for Production of Documents. Copies of those documents are attached hereto.

Movant's Legal Position (LR 37.1(B)(5))

It is Defendant's position that it is entitled to this discovery under F.R.Civ.P. 26, and that Plaintiff has a duty to answer Defendant's Interrogatories pursuant to F.R.Civ.P. 33 and to respond to Defendant's Request for Production of Document under F.R.Civ.P. 34. Plaintiff has not interposed any objection to Defendant's discovery requests but, rather, has simply failed to respond, in violation of the letter and spirit of the rules governing discovery.

Further, it is Defendant's position that this Court should allow Defendant's Motion automatically, for failure of Plaintiff's counsel to respond within seven (7) days to a request for a discovery conference, as mandated by LR 37.1(A).

Thirty Acre Wood, LLC
By its Attorney,

/s/ Frank S. Puccio, Jr.

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CERTIFICATE OF SERVICE

I hereby certify that this document(s) filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants on May 17, 2006.

/s/ Frank S. Puccio, Jr.
FRANK S. PUCCIO, JR./BBO# 407580

MRS/nmk
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